

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1 and 5-9 are pending in this case. Claims 6-8 are withdrawn. Claims 1 and 9 are amended and Claims 2-4, 10, 11, and 13 are canceled without prejudice or disclaimer by the present amendment. Amended Claims 1 and 9 are supported by the specification, figures, and original claims.¹ Amended Claims 1 and 9 add no new matter.

In the outstanding Official Action, Claims 3, 11, and 13 were objected to as containing informalities. Claims 9 and 11 were rejected under 35 U.S.C. §102(b) as anticipated by Uota (Japanese Application Publication No. 09/302,889). Claims 1 and 3-5 were rejected under 35 U.S.C. §103(a) as unpatentable over Uota in view of Daimon (Japanese Application Publication No. 2001-123546) and further in view of Ball (U.S. Patent No. 5,218,793). Claim 2 was rejected under 35 U.S.C. §103(a) as unpatentable over Uota in view of Daimon and Ball and further in view of Ito (Japanese Patent Publication No. 10-183940). Claims 10 and 13 were rejected under 35 U.S.C. §103(a) as unpatentable over Ito in view of Uota and Daimon.

Claim 1 has been amended to recite subject matter from canceled Claims 2-4. Claim 9 has been amended to recite subject matter from canceled Claims 10, 11, and 13. Applicant respectfully submits that amended Claims 1 and 9 are patentable over the cited references, as discussed herebelow.

With regard to the objection to Claims 3, 11, and 13, Claims 3, 11, and 13 have been cancelled, making the objection moot. With regard to the objected to phrase “substantially the same thickness as at least a spaced distance between said siding board and said furring strip,” amended Claim 1 instead recites the phrase “each of said spacing portions having a

¹See e.g. Specification at page 10, lines 11-13 and Figures 1 and 7.

depth, said depth substantially equal to at least a spaced distance between said siding board and said furring strip.” Thus, applicant respectfully submits that amended Claim 1 clearly recites that the depth is the depth of the spacer and not the thickness of the metal.

With regard to the object to term “slantly,” this term was intended to describe that the end portion is formed having an angle that slants upwardly to the supporting portion as shown, for example, in Figures 1 and 7. To clarify this relationship between the end portion and the supporting portion, amended Claims 1 and 9 recite “each of said supporting portions and said respective end portions forming an angle therebetween that slants upwardly.” Accordingly, applicant believes that amended Claims 1 and 9 do not contain any informalities.

Claims 9 and 11 were rejected under 35 U.S.C. §102(b) as anticipated by Uota. To the extent that the present rejection applies to amended Claim 9, applicant respectfully traverses the rejection.

Amended Claim 9 recites a starting fitting comprising, *inter alia*, a base plate portion comprising:

a first corner base plate and a second corner base plate
configured substantially perpendicular to each other between
said spacing portions, each of said first corner base plate and
said second corner base plate having at least one of said
supporting portions.

Uota discloses a metal fitting having a single back plate 1.² Applicant respectfully submits that there is no teaching in Uota to provide a first corner base plate and a second corner base plate substantially perpendicular to each other between spacing portions, as recited in Claim 9. Since Uota does not teach each and every element of Claim 9, applicant respectfully submits that Claim 9 is not anticipated by Uota.

²See Uota, Solution and Figures 1-7.

Claims 1 and 3-5 were rejected under 35 U.S.C. §103(a) as unpatentable over Uota in view of Daimon and further in view of Ball. To the extent the present rejection applies to amended Claim 1, applicant respectfully traverses the rejection. Note that because amended Claim 1 includes subject matter from canceled Claim 2, the following arguments address the Ito reference as well.

Uota discloses a metal fitting having a back plate with portion 2 extending at a right angle from the back plate. Latching claws 3 are formed both in an upward and a downward direction from the support portion 2.³ As shown in Figure 2 of Uota, the invention disclosed in Uota is intended to be located in the middle portion of a wall and receive wall panels into both the upper and lower portions of the latching claws 3. Thus, Uota directly teaches away from the invention recited in Claim 1, as Claim 1 recites a starting fitting disposed in a lower portion of a corner portion of a building configured to support a lowest siding board.

Further, if the apparatus disclosed in Uota were disposed in the lowest corner of the building, the lower portions of the rib like projections 4 would be unnecessary, as would the central latching claw 3. Since the proposed combination changes the principle of operation of Uota and requires a substantial reconstruction and redesign of the elements shown in Uota, applicant respectfully submits that the teachings of Uota are not sufficient to render the claims *prima facie* obvious. See *In re Ratti*, 270 F.2d 810, 813, 123 U.S.P.Q. 349, 352 (C.C.P.A. 1959) and MPEP §2143.01.

Daimon teaches a threading material and connection member including a sill flashing.⁴ As shown in the figures of Daimon, Daimon does not include a spacing portion or a supporting portion as recited in Claim 1. Applicant respectfully submits that Daimon does not teach or suggest including a spacing portion or a supporting portion in the invention disclosed therein, and does not cure the above-noted deficiencies of Uota.

³Uota, Figures 1 and 3.

⁴See Daimon, Solution and Figure 1.

Ball discloses a combination sill sealer and flashing that provides sealing and insulation between substructures of a building.⁵ Thus, applicant respectfully submits that Ball cures none of the above-noted deficiencies of Uota and/or Daimon and that Ball is non-analogous art.

In this last regard, Ball is not in the applicant's field of endeavor and does not disclose a solution to the problem of providing a siding board attachment structure, as claimed in Claim 1. Applicant submits that the structure and function of the apparatus disclosed by Ball is very different from the structure and function of the present invention and the matter with which Ball deals with would not logically commend itself to anyone's attention in considering the above noted problem of concern.

Instead, Ball discloses a sill sealer and flashing that is intended to prevent an air pocket from forming behind siding and is in direct conflict with the present invention because the purpose of the present invention is to create a ventilation area behind the siding boards. As shown in Figure 1 of Ball, the flashing of the prior art can create an air pocket 9 behind the siding of a building. The invention disclosed in Ball ensures that an air pocket is not created behind the siding.

Moreover, as shown in Figure 9 of Ball, the sill seal and flashing disclosed do not provide any support whatsoever to the siding 29. Siding 29 is connected directly to the side of the side of the building without any air space between the wall and the siding.

Accordingly, it is clear that Ball does not consider the problem to be solved by the present invention, much less suggest a solution for it. Thus, one skilled in the art would not look to the Ball reference for guidance in solving the problem solved by the present invention. Consequently, applicant respectfully submits that Ball is non-analogous art with respect to the claimed invention. Use of non-analogous art is insufficient to present a *prima*

⁵See Ball, Abstract.

facie case of obviousness. See *In re Oetiker*, 24 USPQ2d 1443, 1445-1446 (Fed. Cir. 1992) and *In re Clay*, 23 USPQ2d 1058, 1061 (Fed. Cir. 1992). See also MPEP §2141.01(a)

Ito discloses a panel attaching process including a panel support fixture 11 having fitting parts 17 and 18 extending from the panel. Fitting parts 17 and 18 are configured to receive wall panel portions 1 beneath and above the fitting parts. Applicant respectfully submits that the panel support fixture shown in Ito is intended to be used in a central part of a wall such that it secures wall panels with both fitting parts, as shown in Figure 7 of Ito. Thus, Ito cures none of the above-noted reference deficiencies and actually teaches away from the invention recited in Claim 1, as Claim 1 recites a starting fitting disposed in a lower portion of a corner portion of a building configured to support a lowest siding board.

Further, the proposed combination would change the basic principle of operation of the invention disclosed in Ito, as the invention disclosed in Ito is located in a central part to receive and secure wall panels with both fitting parts. In addition, the proposed combination would render the fitting part 18 and the lower portion of support piece 16 superfluous, requiring a substantial reconstruction and redesign of the elements shown in the reference. Thus, applicant respectfully submits that the teachings of Ito are not sufficient to render Claim 1 *prima facie* obvious. See *In re Ratti*, 270 F.2d 810, 813, 123 U.S.P.Q. 349, 352 (C.C.P.A. 1959) and MPEP §2143.01.

Moreover, the above-noted disparate teachings of Ito, Ball, Daimon, and Uota fail to indicate any reason why the artisan would reasonably select these references for combination and the outstanding Office Action fails to set forth any reasonable explanation based on the contents of the references for their selection. Note *In re Lee*, 61 USPQ 2d 1430, 1434 (Fed. Cir. 2002) and its stated requirement for an explanation of “the reasons one of ordinary skill would have been motivated to select the references and to combine them to render the claimed invention obvious.” (emphasis added). Applicant respectfully submits that the

various rationales offered in the outstanding Office Action are what can be done, rather than what one skilled in the art would be motivated to do. Applicant respectfully submits that this is insufficient to establish a *prima facie* case of obviousness. See MPEP §2143.01.

Since the cited references are insufficient to present *prima facie* case of obviousness, applicant respectfully submits that Claim 1 is patentable over the cited art.

Claims 3 and 4 have been canceled making the present rejection moot with respect to these claims.

Claim 5 is dependent from Claim 1 and is believed to be patentable over the cited references for the reasons shown above as to parent Claim 1.

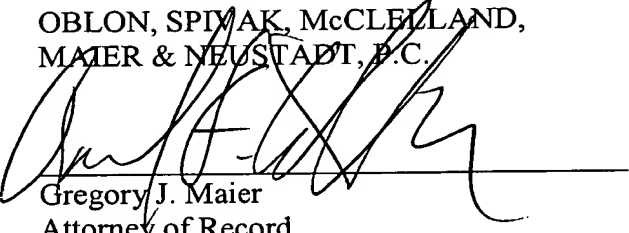
Amended independent Claim 9 recites similar elements to Claim 1. Applicant respectfully argues that Claim 9 is patentable over the cited references for the reasons discussed above with respect to Claim 1.

Applicant respectfully requests that withdrawn Claims 6-8 be reinstated and allowed, as generic Claim 1, from which Claims 6-8 depend, is believed to be patentable.

Accordingly, the outstanding rejections are traversed and the pending claims are believed to be in condition for formal allowance. An early and favorable action to that effect is therefore respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Gregory J. Maier
Attorney of Record
Registration No. 25,599

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413-2220
(OSMMN 08/03)

Raymond F. Cardillo, Jr.
Registration No. 40,440